UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
RESOURCE CONSERVATION
AND RECOVERY

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MEMORANDUM

SUBJECT: Managing PCBs in Sediments – Change to Q&A Manual

FROM: Suzanne Rudzinski, Director
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TO: Carol Ann Siciliano, Associate General Counsel
Cross Cutting Law Office, Office of General Counsel

We are proposing to make a change to the 2009 "Revisions to the PCB Question and Answer Manual" (PCB Q&A Manual) (http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/qacombined.pdf) in order to clarify the regulatory status of sediments contaminated with PCBs. In the case of contaminated sediments, we believe the PCB Q&A Manual is inconsistent with the PCB regulations. At issue is whether the regulatory status of contaminated sediments is based on the nature of in-situ sediments or ex-situ (i.e. dredged) sediments. We are seeking your advice on the procedures to implement this change and the legal risk associated with each of the options described below.

EPA has issued regulations concerning the identification and disposal of different categories of waste containing PCBs pursuant to § 6(e)(1) of the Toxic Substances Control Act(TSCA) at 40 CFR §761. The definition of PCB remediation waste includes (40 CFR 761.3):

> … soil, rags, and other debris generated as a result of any PCB spill cleanup, including, but not limited to:
> (1) Environmental media containing PCBs, such as soil and gravel; dredged materials, such as sediments; settled sediment fines, and aqueous decantate from sediment….

The PCB regulations (40 CFR §761.1) also state that multi-phasic wastes (e.g., PCB contaminated sediments, comprised of soil and water) "may be separated and disposed of using the PCB disposal requirements that apply to each separated, single-phase material" (40 CFR §761.1). Case-law from *Schiavone vs. EPA* further supports this reading.[1]

There has been confusion leading to unintended results, due to one of the PCB Q&A Manual answers that interprets these regulations. The PCB Q&A Manual states that "as found" means *in situ* concentrations or stockpiles if the waste was already in place at the time of site investigation or characterization" (Question 2 on pages 75-76)[2]. Generally, Regions have interpreted this

[1] "Thus, by the explicit terms of the regulation, once one opts for the alternative of separating the phases, the disposal requirements are determined by examining the PCB concentrations applicable to each separated phase." (Docket No. TSCA 01-2005-0061)

[2] ***Q: Does "as found" mean in-situ, or can it refer to concentrations in stockpiles?***
A: "As found" refers to in-situ concentrations or to stockpiles if the waste was already in place at the time of site investigation or characterization.

answer such that the sediments must be sampled *in situ* (i.e., bottom of the river) and that their regulatory status is fixed by these samples. This result prevents the re-sampling of the separated phases and disposal based on the separated phase concentrations, as allowed by the regulations. The result is that significantly more sediment is disposed in TSCA approved disposal facilities than needed to provide environmental protection, at a higher cost and wasting valuable disposal capacity.

Because the interpretation of Question 2 on page 75 of the PCB Q&A Manual (requiring *in situ* testing) is inconsistent with the PCB regulations, we propose to take one of the following actions to resolve this problem:

1. Delete Question 2 on page 75 of the PCB Q&A Manual; or
2. Change Question 2 on page 75 to specify that sediments may be separated by phase (e.g., water, soil) before determining the regulated status of each phase; or
3. Change Question 2 on page 75 to specify that it does not apply to multi-phasic materials.

We believe that all of these options are consistent with the PCB regulations. Additionally, none of the proposed changes will allow for dilution of contaminated materials in order to avoid disposal obligations. OSWER's experience and understanding of the technical characteristics of contaminated sediments supports that changing Question 2 on page 75 of the Q&A Manual will not pose an unreasonable risk to human health and the environment. We are requesting your advice as to the legal risk associated with each of these options.

If we were to select the option of changing Question 2 of the Q&A Manual, ORCR will follow the same process as the current effort regarding the reinterpretation of PCB remediation waste and bulk product waste. This will include Regional, OECA, and OGC review, publishing a FR notice, and providing a 30 day public comment period. This will provide our stakeholders with an opportunity to review the change and submit any comments. We would consider these comments, but would not post to the web or place in a docket any responses to the comments. Upon completion of this process, we will update the Q&A manual to reflect the change. We would appreciate your feedback on the adequacy of this process in terms of legal defensibility of the change.

Please feel free to contact me if you have any further questions or your staff can contact David Hockey, Chief of the Cleanup Programs Branch, at hockey.david@epa.gov.

PCB Q&A Manual: As-found concentration (pg. 75-76)

1. Q: Section 761.61 states that PCB remediation waste must be managed and disposed of "based on the concentration at which the PCBs are found". What does this mean?
A: This means the concentration of the PCBs in the waste at the site at the time the waste is discovered, as opposed to the concentration of the PCBs in the material that was originally spilled, released, or otherwise disposed of at the site. For example, if dielectric fluid containing PCBs at ≥500 ppm was spilled onto soil, and testing revealed the PCB concentration of the soil to be <50 ppm, the soil would be managed as having a concentration of <50 ppm, not as having the concentration of the dielectric fluid that spilled. You may not dilute the as-found concentration of the contaminated soil by mixing it with clean soil during excavation or other management activities.

2. Q: Does "as found" mean in-situ, or can it refer to concentrations in stockpiles?
A: "As found" refers to in-situ concentrations, or to stockpiles if the waste was already in place at the time of site investigation or characterization.

3. Q: Should PCB/radioactive remediation waste be characterized based on the source concentration or the as-found concentration?
A: All types of remediation waste are regulated based on their as-found concentrations. Please review the above questions in this section on properly managing waste based on its "as-found" concentration.

4. Q: If I generate a stockpile of soil by excavating a spill site, what is the as-found concentration of the waste -- the concentration of PCBs in the ground prior to excavation, or the final concentration in the stockpile?
A: The applicable concentration is the one found in the soil prior to excavation.

5 Q: How do I determine the concentration of multi-phasic PCB remediations waste such as sludges?
A: Separate the multi-phasic waste and sample each phase separately. You may either dispose of each phase separately based on the as-found concentration in that phase, or dispose of the waste without separating it based on the highest as-found concentration of any phase.